IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mrs.Saraswati Saini v. The Air Force School and others.

S.B.CIVIL WRIT PETITION NO.4333/2001
under Article 226 of the Constitution of India.

Date of Order : March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Nitin Trivedi, for the petitioner.
Mr. Ravi Bhansali, for the respondents.

BY THE COURT :

This writ petition is directed against the order dated 18.10.2001 passed by Secretary, Chairman School Management Committee, Air Force School, Bikaner. By the order dated 18.10.2001 the petitioner was dismissed from service on discipline and personal conduct of unbecoming of a teacher.

Briefly stated, facts required to be noticed are that the petitioner entered in the services of Air Force School in the year 1982 as a

Primary School Teacher. Her services were confirmed w.e.f. 14.1.1984 by an order dated 29.7.1986. A notice to show cause dated 21.3.2001 was served upon her to explain as to why proceedings be not initiated against her being failed to improve teaching performance. The petitioner in response to the notice dated 21.3.2001 submitted an explanation to the Officer-in-charge, Air Force School on 31.3.2001 stating therein that she always taught in excellent manner and, therefore, it was wrong to say that she failed to improve her teaching performance. She also alleged malafides against certain officers of the school while issuing notice to show cause.

The petitioner was also served with a communication dated 11.9.2001 whereby certain charges were framed against her. The document dated 11.9.2001 though mentions three charges but it no where mentions with regard to initiation of any disciplinary proceedings. A reminder to the communication dated 11.9.2001 was served on the petitioner on 17.9.2001. Under reminder dated 17.9.2001 the Officer-in-charge of Air Force School, Bikaner also served elaborate and definite charges framed against the petitioner in consonance with letter dated 11.9.2001. By reminder dated 27.9.2001 the petitioner was directed to submit her reply to the allegations within a period of 24 hours. The allegations levelled upon the petitioner under communication dated 17.9.2001 reads as under:-

"1. Not abiding by rules and regulations of Air Force School. You have approached legal bodies to settle your grievances and not followed the redressal system of the Air Force School.

2. Not obeyed orders by the higher authorities. You have refused to be counseled by the Head Mistress, Air Force School and sign the counseling register on 10 Sep 2001 and subsequently signed the counseling register "under protest".

3. Passing derogatory comments/remarks on School Management Committee. You had alleged bias on part of the administration. On 05 Sep 2001 by saying "there are different rule for different teachers" and words to that effect."

The petitioner on receiving the communication dated 17.9.2001 submitted a reply to the Officer-in-charge, Air Force School on the same day. The petitioner made a request to the Officer-in-charge to supply her certain documents to submit an effective defence. No response was given to the petitioner's reply, however, she was served with order dated 18.10.2001 whereby she was dismissed from services. The order of dismissal dated 18.10.2001 reads as under:-

"LETTER OF DISMISSAL

1. Reference is made to show cause notice vide letter No.262SU/423/1/ED dated 20 Sep 2001.

> 2. Your reply to the above has been found to be inadequate and insufficient . Further you have refused to co-operate with the Board of Inquiry conveyed on 13 Sep 2001 at AF School Primary Wing.
>
> 3. It has come to our notice that you have directly approached Regional Provident Fund Commissioner for redressal without following the official channel of communication.
>
> 4. Your services are no longer required in the school. Hence, you are dismissed from service on discipline and personal conduct of unbecoming of a teacher with immediate effect."

The sole reason given under the order dated 18.10.2001 for dismissal of the petitioner was that she approached Regional Provident Fund Commissioner for redressal of her grievance without following the official channel of communication. The petitioner being aggrieved by the order dated 18.10.2001 preferred the present writ petition.

A reply to the writ petition has been filed on behalf of the respondents. The respondents while justifying their act averred that the disciplinary proceedings were conducted against the petitioner in accordance with applicable provisions and only after establishing guilt of the petitioner she was proportionately punished by penalty of dismissal. The respondents

to substantiate their contention placed on record a copy of inquiry report and also a copy of the notice which was said to be issued to the petitioner intimating her proposed punishment and also providing her an opportunity to submit her comments with regard to proposed punishment.

I have heard counsel for the parties.

According to clause (7) of Chapter-IV of the Air Force School Education Code the procedure to impose major penalties is as under:-

> "7. No order imposing any major penalty shall be made on any employee without inquiry and the procedure to be followed is outlined in the succeeding sub paragraphs:-
>
> (a) The disciplinary authority shall frame definite charge/charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he/she shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks a written statement of his/her defence and also to state whether he/she desires to be heard in person.
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> (b) On receipt of the written statement of defence, or where no

such statement is received within the specified time, the disciplinary authority may itself conduct inquiry into such of the charges as are not admitted or if considers it necessary to do so, appoint an inquiry officer for the purpose.

(c) At the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on such of the charges together with the reasons thereof.

(d) The disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of the opinion that any of the major penalties should be imposed, the following procedure is to be followed:-

(i)Furnish the employee with a copy of the report of the Inquiry Officer, where an inquiry has been made by such officer.

(ii)Give him/her notice in writing indicating the action proposed to be taken against him/her and calling upon him/her to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action.

(iii)On receipt of the representation, if any, made by

> the employee, the disciplinary authority shall determine the penalty, if any which should be imposed on the employee.
>
> (iv)The penalty to be imposed on the employee should be intimated to him/her and an opportunity may be given to him to make a representation against the penalty if he/she so desires.
>
> (v)After considering the representation made by the employee against the penalty, the disciplinary authority shall record findings on each charge and award the penalty.
>
> (vi)Individual may represent against the award of punishment within 15 days from the date of award. Such representation will be dealt by Appellate authority."

In the present case the procedure prescribed under Clause (7) was totally ignored by the respondents while imposing a major penalty. The respondents proceeded against the petitioner in total disregard to the provisions applicable to the extent that no suffficient time was provided by the respondents to the petitioner to submit her written statement. From perusal of record of the case it is apparent that the respondents acted in most high handed manner with the petitioner. Not only the penalty is disproportionate to the

delinquency but the disciplinary proceeding which was said to be conducted against the petitioner was also nothing but an empty formality. The respondents acted against the petitioner with bias which is apparent from the facts discussed hereinafter.

As stated, definite charges were served upon the petitioner under a communication dated 17.9.2001. By this communication three allegations were levelled against the petitioner. The respondents allowed only a period of 24 hours to the petitioner to submit her explanation though clause (7) provides that not less than two weeks time shall be given to submit written statement. The petitioner at earliest submitted a representation to the respondents and demanded certain documents. The respondents without considering request of the petitioner to supply the documents demanded, imposed a punishment of dismissal under the order impugned dated 18.10.2001. It is interesting to note that the respondents to defend their act placed on record the proceedings of inquiry as Anx.R/1 from perusal of which it appears that the inquiry was commenced on 10.9.2001 and it reached to its conclusion on 17.9.2001 that is the date on which definite and elaborate charges were communicated to the petitioner. This fact clearly shows that when the charges were communicated to the petitioner the inquiry was already concluded. This fact itself is enough to prove violation of the procedure

provided to impose a major punishment. In fact the inquiry conducted by the respondents is no inquiry in eye of law.

It is also pertinent to note that the inquiring authority i.e. a board of three persons, without having any evidence on record noted its finding and held the petitioner guilty for the charges alleged. The inquiry committee travelled beyond the jurisdiction vested with it to the extent of making a recommendation to terminate the petitioner from services. The jurisdiction vested with the inquiry committee was to record its finding on the charges together with the reasons thereof at the conclusion of inquiry. The inquiry officer or committee was not having any jurisdiction to propose punishment to the disciplinary authority. In the present case inquiry committee exceeded its jurisdiction while proposing penalty sought to be imposed.

It is also apparent that the findings were given by the inquiring authority with regard to certain events taken place in school on 5.9.2001 and also with regard to certain warnings given to her with regard to her teaching methods and performance. The findings given by the inquiring authority no where deals with, with regard to the submission of representation by the petitioner to Provident Fund Commissioner for redressal of her grievance without approaching the school management but the disciplinary authority

based the order of dismissal solely on the count that the petitioner approached Regional Provident Fund Commissioner for redressal without following the official channel of communication. The reason given by the disciplinary authority for imposing penalty of dismissal upon the petitioner in fact is having no foundation as the inquiry committee also did not consider this issue and also not gave any finding in this regard. This fact shows total non-application of mind by the disciplinary authority while imposing the punishment or dismissal under the order impugned.

A perusal of entire record proves it well that the respondents were determined to punish the petitioner and for that purpose they ignored the procedure for imposing penalties which is provided under Chapter-IV of Air Force School Education Code. Clause (7) of Chapter-IV of the Air Force School Education Code prescribes a complete procedure for holding inquiry for imposing major punishment. The respondents have not only ignored the procedure but also not cared to adhere the minimum requirement i.e. observance of principles of natural justice. The entire record gives an absolute impression with regard to total arbitrary and colourful exercise of powers.

In view of whatever stated above the writ petition succeeds and, therefore, the order impugned Anx.9 dated 18.10.2001 is hereby quashed. The petitioner is declared entitled for all

consequential benefits including reinstatement in services and back wages. The writ petition is allowed with cost which is quantified as Rs.11,000/-.

(GOVIND MATHUR),J.

kkm/ps.